

**BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. AC-2010-3

DENNIS AKIRA ITO
21700 Oxnard Street #1490
Woodland Hills, California 91367

Certified Public Accountant Certificate No.
CPA 23233

Respondent.

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the California Board of Accountancy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on April 30, 2011.

It is so ORDERED March 30, 2011.



FOR THE CALIFORNIA BOARD OF
ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

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Attorney General of California
2 ALFREDO TERRAZAS
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8 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. AC-2010-3

12 **DENNIS AKIRA ITO**
21700 Oxnard Street #1490
13 Woodland Hills, California 91367

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

14 **Certified Public Accountant Certificate No.**
CPA 23233

15
16 Respondent.

17 In the interest of a prompt and speedy settlement of this matter, consistent with the public
18 interest and the responsibilities of the California Board of Accountancy of the Department of
19 Consumer Affairs, the parties hereby agree to the following Stipulated Settlement and
20 Disciplinary Order which will be submitted to the Board for approval and adoption as the final
21 disposition of Accusation No. AC-2010-3, relating to the Certified Public Accountant Certificate
22 of Respondent Dennis Akira Ito.

23 **PARTIES**

24 1. Patti Bowers (Complainant) is the Executive Officer of the California Board of
25 Accountancy. She brought this action solely in her official capacity and is represented in this
26 matter by Kamala D. Harris, Attorney General of the State of California, by Diann Sokoloff,
27 Supervising Deputy Attorney General.
28

2. Respondent Dennis Akira Ito (Respondent) is represented in this proceeding by attorney Frederick S. Fields, Esq., whose address is: Coblenz, Patch, Duffy & Bass, One Ferry Building, Suite 200, San Francisco, CA 94111.

3. On or about June 26, 1976, the California Board of Accountancy issued Certified Public Accountant Certificate No. CPA 23233 to Dennis Akira Ito (Respondent). The Certified Public Accountant Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. AC-2010-3 and will expire on July 31, 2012, unless renewed.

JURISDICTION

4. Accusation No. AC-2010-3 was filed before the California Board of Accountancy (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on November 9, 2009. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. AC-2010-3 is attached as Exhibit A and incorporated by reference.

WAIVERS AND CONTINGENCY

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. AC-2010-3. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

1 8. It is understood that in signing this stipulation rather than further contesting the
2 Accusation, Respondent is voluntarily consenting to the adoption of this Stipulated Settlement as
3 the Board's Decision, enabling the Board of Accountancy of the State of California to issue the
4 following order without further legal process. Respondent represents that no tender, offer,
5 promises, threats of inducement of any kind, whatsoever, have been made by the Board or any
6 member, officer, agent or representative thereof in consideration of this settlement offer or
7 otherwise to induce him to so consent.

8 9. This stipulation shall be subject to approval by the Board. Respondent understands
9 and agrees that Complainant, her counsel and the Board's staff may communicate directly with
10 the Board regarding this stipulation and settlement, without notice to or participation by
11 Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he
12 may not withdraw his agreement to seek to rescind the stipulation prior to the time the Board
13 considers and acts upon it.

14 10. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated
15 Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph. It shall
16 have no evidentiary value, shall be inadmissible in any legal action between the parties, and shall
17 not be relied upon or introduced in any disciplinary, or other, action or proceeding by either party
18 hereto. In the event that the Stipulated Settlement is not adopted, nothing recited herein shall be
19 construed as a waiver of Respondent's right to a hearing or as an admission of the truth of any of
20 the matters charged. Communications pursuant to this paragraph, and consideration of this
21 matter, shall not disqualify the Board or other persons from future participation in this or any
22 other matter affecting Respondent. Respondent agrees that should the Board reject this Stipulated
23 Settlement and if this case proceeds to hearing, Respondent will assert no claim that the Board
24 was prejudiced by its review and discussion of this Stipulation or of any records related hereto.

25 ADMISSIONS AND FURTHER STIPULATIONS BETWEEN THE PARTIES

26 11. Respondent admits that the charges and allegations asserted in Accusation No. AC-
27 2010-3, if proven at hearing, constitutes cause for imposing discipline upon his license.
28

12. Respondent further agrees not to take any action or make any public statement that creates, or tends to create, the impression that any of the matters set forth in the Stipulated Settlement, Order and Decision are without factual basis.

13. The Board, in accepting this Stipulation, is foregoing its right to institute further disciplinary proceedings against Respondent based upon his conduct related to tax shelters up to the time of the filing of the Board's charges. However, the Board reserves the right to initiate or continue investigations and administrative proceedings related to the conduct of other Board licensees who may have been involved in acts or omissions related to these or other tax shelters, as well as any other violations of the Accountancy Act which may have occurred by Board licensees in relation to tax shelters.

14. Respondent agrees that his Certified Public Accountant Certificate is subject to discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

15. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

16. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

IN CONSIDERATION OF THE FOREGOING admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Certified Public Accountant Certificate No. CPA 23233,
issued to Respondent Dennis Akira Ito (Respondent) is revoked. However, the revocation is

1 stayed and Respondent's certificate is placed on probation for four (4) years on the following
2 terms and conditions.

3 1. **Actual Suspension.** Certified Public Accountant Certificate No. CPA 23233
4 issued to Dennis Akira Ito is suspended for one year. During the period of suspension the
5 Respondent shall engage in no activities for which certification as a Certified Public Accountant
6 or Public Accountant is required as described in Business and Professions Code, Division 3,
7 Chapter 1, Section 5051. Notwithstanding the suspension, Respondent shall comply with the
8 probationary terms set forth below.

9 2. **Obey All Laws.** Respondent shall obey all federal, California, other states' and
10 local laws, including those rules relating to the practice of public accountancy in California.

11 3. **Submit Written Reports.** Respondent shall submit, within ten (10) days of
12 completion of the quarter, written reports to the Board on a form obtained from the Board. The
13 Respondent shall submit, under penalty of perjury, such other written reports, declarations, and
14 verification of actions as are required. These declarations shall contain statements relative to
15 Respondent's compliance with all the terms and conditions of probation. Respondent shall
16 immediately execute all release of information forms as may be required by the Board or its
17 representatives.

18 4. **Personal Appearances.** Respondent shall, during the period of probation, appear
19 in person at interviews/meetings as directed by the Board or its designated representatives,
20 provided such notification is accomplished in a timely manner.

21 5. **Comply With Probation.** Respondent shall fully comply with the terms and
22 conditions of the probation imposed by the Board and shall cooperate fully with representatives
23 of the Board of Accountancy in its monitoring and investigation of the Respondent's compliance
24 with probation terms and conditions. Respondent shall keep the Board informed regarding how
25 to contact him as required by the Board or its designees. Respondent voluntarily agrees to fully
26 cooperate with, and make himself available to, the Board and its designees, including the Office
27 of the Attorney General, without the necessity of a subpoena, in any investigation of other Board
28 licensees regarding tax shelters, including, but not limited to, the providing of interviews,

1 statements, affidavits, declarations, and any other documents or other types of information
2 requested, consistent with the requirements of confidentiality and law. Respondent, if called to
3 do so, shall cooperate with the Board and shall testify at any subsequent administrative or civil
4 proceeding if asked to do so by the Board.

5 6. **Practice Investigation.** Respondent shall be subject to, and shall permit, practice
6 investigation of the Respondent's professional practice. Such a practice investigation shall be
7 conducted by representatives of the Board, provided notification of such review is accomplished
8 in a timely manner.

9 7. **Comply With Citations.** Respondent shall comply with all final orders resulting
10 from citations issued by the Board of Accountancy.

11 8. **Tolling of Probation For Out-of-State Residence/Practice.** In the event
12 Respondent should leave California to reside or practice outside this state, Respondent must
13 notify the Board in writing of the dates of departure and return. Periods of non-California
14 residency or practice outside the state shall not apply to reduction of the probationary period, or
15 of any suspension. No obligation imposed herein, including requirements to file written reports,
16 reimburse the Board costs, or make restitution to consumers, shall be suspended or otherwise
17 affected by such periods of out-of-state residency or practice except at the written direction of the
18 Board.

19 9. **Violation of Probation.** If Respondent violates probation in any respect, the
20 Board, after giving Respondent notice and an opportunity to be heard, may revoke probation and
21 carry out the disciplinary order that was stayed. If an accusation or a petition to revoke probation
22 is filed against Respondent during probation, the Board shall have continuing jurisdiction until
23 the matter is final; and the period of probation shall be extended until the matter is final.

24 10. **Completion of Probation.** Failure to complete the probationary requirements
25 shall automatically extend the period of probation and the Board shall have continuing
26 jurisdiction of this matter until the condition is satisfied. Upon successful completion of
27 probation, Respondent's license will be fully restored.

28 11. **Ethics Course/Examination.** Respondent shall take and pass with a score of 90

1 percent or better a Board approved ethics examination (within a given period of time or prior to
2 the resumption of practice). If Respondent fails to pass the examination within the time period
3 provided or within two attempts, Respondent shall so notify the Board and shall cease practice
4 until Respondent takes and successfully passes the exam, has submitted proof of passing the exam
5 to the Board, and has been notified by the Board that he may resume practice. Failure to pass the
6 required examination no later than 100 days prior to the termination of probation shall constitute a
7 violation of probation.

8 Notwithstanding any other provision of this probation, failure to take and pass this
9 examination within five years of the effective date of this order constitutes a separate cause for
10 discipline of Respondent's license.

11 12. **Active License Status.** Respondent shall at all times maintain an active license
12 status with the Board, including during any period of suspension. If the license is expired at the
13 time the Board's decision becomes effective, the license must be renewed within 30 days of the
14 effective date of the decision.

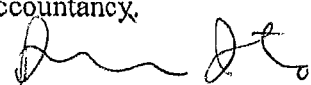
15 13. **Cost Reimbursement.** Respondent shall reimburse the Board \$15,000 for its
16 investigation and prosecution costs. The reimbursement shall be made in quarterly payments and
17 due with the quarterly written reports, the final payment being due one year before probation is
18 scheduled to terminate.

19 ACCEPTANCE

20 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
21 discussed it with my attorney, Frederick S. Fields, Esq. I understand the stipulation and the effect
22 it will have on my Certified Public Accountant Certificate. I enter into this Stipulated Settlement
23 and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
24 Decision and Order of the California Board of Accountancy.

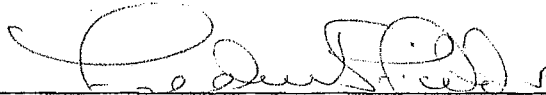
25 DATED: _____

3/3/11

26 
DENNIS AKIRA ITO
Respondent

1 I have read and fully discussed with Respondent Dennis Akira Ito the terms and conditions.
2 and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve
3 its form and content.

4 DATED: March 7, 2011



Frederick S. Fields, Esq.
Attorney for Respondent

6 ENDORSEMENT

7 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
8 submitted for consideration by the California Board of Accountancy of the Department of
9 Consumer Affairs.

10 Dated: ~~February~~ ^{March} 9, 2011

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
ALFREDO TERRAZAS
Senior Assistant Attorney General



DIANN SOKOLOFF
Supervising Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. AC-2010-3

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8 *Attorneys for Complainant*

9
10 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 **DENNIS AKIRA ITO**
14 21700 Oxnard Street, #1200
Woodland Hills, CA 91367
15 **Certified Public Accountant**
16 **Certificate No. CPA 23233**

Case No. AC-2010-3

ACCUSATION

17
18 Complainant alleges:

19 **PARTIES**

- 20 1. Patti Bowers (Complainant) brings this Accusation solely in her official capacity as
21 the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs.
22 2. On or about June 25, 1976, the California Board of Accountancy issued Certified
23 Public Accountant Number CPA 69113 to Dennis Akira Ito (Respondent). The Certified Public
24 Accountant Certificate was in full force and effect at all times relevant to the charges brought
25 herein and expires on July 31, 2010, unless renewed.

26 **JURISDICTION**

- 27 3. This Accusation is brought before the California Board of Accountancy (Board),
28 Department of Consumer Affairs, under the authority of Section 5100 of the Business and

1 Professions Code, which provides, in relevant part, that, after notice and hearing, the Board may
2 revoke, suspend or refuse to renew any permit or certificate granted for unprofessional conduct
3 which includes, but is not limited to, one or any combination of the causes specified therein,
4 including willful violations of the Accountancy Act and willful violations of rules and regulations
5 promulgated by the Board.

6 4. Business and Professions Code¹ Sections 118(b) and 5109 provide in pertinent part
7 that the suspension, expiration, cancellation, or forfeiture of a license issued by the Board shall
8 not deprive the Board of its authority to investigate, or to institute or continue a disciplinary
9 proceeding against a licensee upon any ground provided by law, or to enter an order suspending
10 or revoking the license or otherwise taking disciplinary action against the licensee on any such
11 ground.

12 STATUTORY AND REGULATORY PROVISIONS

13 5. Section 5100 states:

14 "After notice and hearing the board may revoke, suspend, or refuse to renew any
15 permit or certificate granted under Article 4 (commencing with Section 5070) and Article 5
16 (commencing with Section 5080), or may censure the holder of that permit or certificate for
17 unprofessional conduct that includes, but is not limited to, one or any combination of the
18 following causes:

19 ...
20 "(c) Dishonesty, fraud, gross negligence, or repeated negligent acts committed in the
21 same or different engagements, for the same or different clients, or any combination of
22 engagements or clients, each resulting in a violation of applicable professional standards that
23 indicate a lack of competency in the practice of public accountancy or in the performance of the
24 bookkeeping operations described in Section 5052.

25 ...

26
27 ¹ All statutory references are to the Business and Professions Code unless otherwise
28 indicated.

1 "(g) Willful violation of this chapter or any rule or regulation promulgated by the
2 board under the authority granted under this chapter.

3 ...
4 "(i) Fiscal dishonesty or breach of fiduciary responsibility of any kind.

5 "(j) Knowing preparation, publication, or dissemination of false, fraudulent, or
6 materially misleading financial statements, reports, or information."

7 "(k) Embezzlement, theft, misappropriation of funds or property, or obtaining
8 money, property, or other valuable consideration by fraudulent means or false pretenses.

9 6. Licensees are required by Board Rule 5 to comply with all Board rules, including
10 Board Rule 58, which provides that licensees engaged in the practice of public accountancy shall
11 comply with all applicable professional standards.

12 7. Business and Professions Code section 125 provides, in pertinent part, that any
13 licensee is guilty of a misdemeanor and subject to the disciplinary provisions of this code
14 applicable to him, who conspires with a non-licensee to violate any provision of this code.

15 **APPLICABLE PROFESSIONAL STANDARDS**

16 8. Professional standards or standards of practice pertinent² to this Accusation include,
17 without limitation:

18 A. Title 31, Part 10 of Internal Revenue Service (IRS) Regulations (31 CFR 10)³
19 including:

20 (1) Section 10.21 (Knowledge of Client's Omission), provides that:
21 "[a] practitioner who, having been retained by a client with respect to a matter
22 administered by the Internal Revenue Service, knows that the client has not
23 complied with the revenue laws of the United States or has made an error or
24 omission from any return, document, affidavit, or other paper which the client
25 submitted or executed under the revenue laws of the United States, must advise the
26 client promptly of the fact of such noncompliance, error, or omission. The
27 practitioner must advise the client of the consequences as provided under the Code
28 and regulations of such noncompliance, error, or omission."

26 ² All references herein to standards and other authoritative literature are to the versions in
27 effect at the time the shelters were being developed, marketed or sold.

28 ³ 31 CFR 10 is also referred to as "Circular 230" or Section 10 of the IRS Regulations.
Among other things, Circular 230 governs practice by CPAs before the IRS.

1 (2) Section 10.22(a) (Diligence as to Accuracy), provides that, in general, a
2 practitioner must exercise due diligence:

3 “(1) In preparing or assisting in the preparation of, approving, and filing tax
4 returns, documents, affidavits, and other papers relating to Internal Revenue
5 Service matters;

6 (2) In determining the correctness of oral or written representations made by the
7 practitioner to the Department of the Treasury; and

8 (3) In determining the correctness of oral or written representations made by the
9 practitioner to clients with reference to any matter administered by the Internal
10 Revenue Service.”

11 (3) Section 10.30 (Solicitation), provides that a practitioner may not, with
12 respect to any Internal Revenue Service matter, in any way use or participate in the use of any
13 form or public communication or private solicitation containing a false, fraudulent, or coercive
14 statement or claim; or a misleading or deceptive statement or claim.

15 (4) Section 10.34 (Standards for Advising with Respect to Tax Return Positions
16 and for Preparing or Signing Returns), provides that a practitioner may not sign a tax return as a
17 preparer if the practitioner determines that the tax return contains a position that does not have a
18 realistic possibility of being sustained on its merits (the “realistic possibility standard”) unless the
19 position is not frivolous and is adequately disclosed to the Internal Revenue Service.

20 B. American Institute of Certified Public Accountants (AICPA) Code of
21 Professional Conduct, which includes Section I - Principles and Section II - Rules. Both the
22 Principles (Articles III and VI) and the Rules are relevant to the allegations herein.

23 (1) Rule 102 (Integrity and Objectivity), provides that:

24 “In the performance of any professional service, a member shall maintain objectivity
25 and integrity, shall be free of conflicts of interest, and shall not knowingly misrepresent facts or
26 subordinate his or her judgment to others.”

27 (2) Rule 102.2 (Conflicts of Interest), provides that:

28 “A member shall be considered to have knowingly misrepresented facts in violation
of rule 102. . . when he or she knowingly—

1 a. Makes, or permits or directs another to make, materially false and
2 misleading entries in an entity's financial statements or records; or

3 b. Fails to correct an entity's financial statements or records that are
4 materially false and misleading when he or she has the authority to record an entry; or

5 c. Signs, or permits or directs another to sign, a document containing
6 materially false and misleading information."

7 (3) Rule 102-4 (Subordination of Judgment by a Member), provides that:

8 "Rule 102 [ET section 102.01] prohibits a member from knowingly misrepresenting facts
9 or subordinating his or her judgment when performing professional services. Under this rule, if a
10 member and his or her supervisor have a disagreement or dispute relating to the preparation of
11 financial statements or the recording of transactions, the member should take the following steps
12 to ensure that the situation does not constitute a subordination of judgment:

13 "1. The member should consider whether (a) the entry or the failure to record
14 a transaction in the records, or (b) the financial statement presentation or the nature or omission of
15 disclosure in the financial statements, as proposed by the supervisor, represents the use of an
16 acceptable alternative and does not materially misrepresent the facts. If, after appropriate research
17 or consultation, the member concludes that the matter has authoritative support and/or does not
18 result in a material misrepresentation, the member need do nothing further.

19 2. If the member concludes that the financial statements or records could be
20 materially misstated, the member should make his or her concerns known to the appropriate
21 higher level(s) of management within the organization (for example, the supervisor's immediate
22 superior, senior management, the audit committee or equivalent, the board of directors, the
23 company's owners). The member should consider documenting his or her understanding of the
24 facts, the accounting principles involved, the application of those principles to the facts, and the
25 parties with whom these matters were discussed.

26 3. If, after discussing his or her concerns with the appropriate person(s) in
27 the organization, the member concludes that appropriate action was not taken, he or she should
28 consider his or her continuing relationship with the employer. The member also should consider

1 any responsibility that may exist to communicate to third parties, such as regulatory authorities or
2 the employer's (former employer's) external accountant. In this connection, the member may wish
3 to consult with his or her legal counsel.

4 4. The member should at all times be cognizant of his or her obligations
5 under interpretation 102-3 [ET section 102.04].”

6 (4) Rule 201 (General Standards), provides that:

7 “A member shall comply with the following standards and with any interpretations thereof
8 by bodies designated by Council.

9 A. Professional Competence. Undertake only those professional services that the
10 member or the member's firm can reasonably expect to be completed with professional
11 competence.

12 B. Due Professional Care. Exercise due professional care in the performance of
13 professional services.

14 C. Planning and Supervision. Adequately plan and supervise the performance of
15 professional services.

16 D. Sufficient Relevant Data. Obtain sufficient relevant data to afford a reasonable
17 basis for conclusions or recommendations in relation to any professional services performed.”

18 (5) Rule 202 (Compliance with Standards), provides that:

19 “A member who performs auditing, review, compilation, management consulting, tax, or
20 other professional services shall comply with standards promulgated by bodies designated by
21 Council.”

22 (6) Rule 501 (Acts discreditable), provides that:

23 “A member shall not commit an act discreditable to the profession.”

24 (7) Rule 501-4 (Negligence in the Preparation of Financial Statements or
25 Records), provides that:

26 “A member shall be considered to have committed an act discreditable to the profession in
27 violation of rule 501 [ET section 501.01] when, by virtue of his or her negligence, such
28 member—

- 1 a. Makes, or permits or directs another to make, materially false and
- 2 misleading entries in the financial statements or records of an entity; or
- 3 b. Fails to correct an entity's financial statements that are materially
- 4 false and misleading when the member has the authority to record an entry; or
- 5 c. Signs, or permits or directs another to sign, a document containing
- 6 materially false and misleading information."

7 (8) Rule 502 (Advertising and Other Forms of Solicitation), provides that: "A
8 member in public practice shall not seek to obtain clients by advertising or other forms of
9 solicitation in a manner that is false, misleading, or deceptive. Solicitation by the use of coercion,
10 over-reaching, or harassing conduct is prohibited."

11 (9) Rule 502-2 (False, Misleading or Deceptive Acts in Advertising or
12 Solicitation), provides that:

13 "Advertising or other forms of solicitation that are false, misleading, or deceptive are not in
14 the public interest and are prohibited. Such activities include those that—

- 15 1. Create false or unjustified expectations of favorable results.
- 16 2. Imply the ability to influence any court, tribunal, regulatory agency, or
- 17 similar body or official.
- 18 3. Contain a representation that specific professional services in current
- 19 or future periods will be performed for a stated fee, estimated fee or fee range when it was likely
- 20 at the time of the representation that such fees would be substantially increased and the
- 21 prospective client was not advised of that likelihood.
- 22 4. Contain any other representations that would be likely to cause a
- 23 reasonable person to misunderstand or be deceived."

24 C. AICPA Statements on Standards for Tax Services⁴, including:

- 25 (1.) TS Section 100 - Tax Return Positions.
- 26 (2.) TS Section 600 - Knowledge of Error: Return Preparation.

27 ⁴ The AICPA *Statements on Standards for Tax Services*, are codified as "TS" with section
28 numbers, e.g., TS Section 100.

1 (3.) TS Section 800 - Form and Content of Advice to Tax Payers.

2 D. The Internal Revenue Code, including:

3 "(1) 26 U.S.C. §6111 (Section 6111), which governs the registration of tax
4 shelters.

5 (2) 26 U.S.C. §6112 (Section 6112), which imposes certain obligations on the
6 organizer or seller of a "potentially abusive tax shelter."

7 **COST RECOVERY**

8 9. Code Section 5107(a) provides, in pertinent part, that the Executive Officer of the
9 Board may request the administrative law judge, as part of the proposed decision in a disciplinary
10 proceeding, to direct any holder of a permit or certificate found to have committed a violation or
11 violations of the Accountancy Act to pay to the Board all reasonable costs of investigation and
12 prosecution of the case, including, but not limited to, attorneys' fees incurred prior to the
13 commencement of the hearing. A certified copy of the actual costs, or a good faith estimate of
14 costs signed by the Executive Officer, constitutes prima facie evidence of reasonable costs of
15 investigation and prosecution of the case.

16 **PUBLIC PROTECTION**

17 10. Code Section 5000.1 provides, as follows: "Protection of the public shall be the
18 highest priority for the California Board of Accountancy in exercising its licensing, regulatory,
19 and disciplinary functions. Whenever the protection of the public is inconsistent with other
20 interests sought to be promoted, the protection of the public shall be paramount."

21 **FACTUAL BACKGROUND**

22 11. The subject matter of this Accusation is Respondent's participation in the
23 development, promotion, and implementation of certain tax shelter schemes by himself and other
24 KPMG⁵ personnel, including senior partners and members of top management, which assisted

25 ⁵ At all times relevant to this Amended Accusation, KPMG was limited liability
26 partnership headquartered in New York, New York, with more than 90 offices nationwide, of
27 which several are in California. Among the California KPMG offices during the time period
28 relevant herein were offices in Los Angeles, Woodland Hills, San Diego, San Francisco, and
Walnut Creek. KPMG was one of the largest auditing firms in the world, providing audit services
to many of the largest corporations in the United States and elsewhere. KPMG also provided tax

(continued...)

1 high net worth United States citizens to evade United States individual income taxes on billions of
2 dollars in capital gain and ordinary income through the use of unregistered and fraudulent tax
3 shelters.^{6, 7}

4 12. Respondent was an employee of KPMG LLP⁸ from at least in or about 1973 (when
5 the company used the name Peat, Marwick, Mitchell & Company) through in or about 2005,
6 working in the Los Angeles and San Francisco Offices. In 1983, Respondent became a partner
7 while working in the Los Angeles KPMG office. Sometime before 1994, he became the partner
8 in charge of the Los Angeles Personal Financial Planning (PFP) group. In 1994, respondent was
9 transferred to the San Francisco office to be the partner in charge of the San Francisco PFP group.
10 In 2001, respondent transferred back to the Los Angeles office where he worked until in or about
11 2003 when he transferred to the Woodland Hills office. Respondent separated from KPMG in or
12 about 2005.

13 13. Board Case No. AC-2006-28, filed against KPMG, incorporated the Statement of
14 Facts attached to the Deferred Prosecution Agreement which KPMG entered with the federal
15 government, in or about August 26, 2005. In resolving Case No. AC-2006-28 with the Board,
16 KPMG admitted and accepted that, as set forth in detail in the Statement of Facts attached to the
17 DPA (which was incorporated into Accusation AC-2006-28),

18 (...continued)

19 services to corporate and individual clients, some of whom were very wealthy. These tax services
20 included, but were not limited to, preparing federal and state tax returns, providing tax planning
21 and tax advice, and representing clients, for example, in Internal Revenue Service ("IRS") and
22 Franchise Tax Board ("FTB") audits, and in Tax Court litigation with the IRS.

23 ⁶ The portion of KPMG's tax practice that specialized in providing tax advice to
24 individuals, including wealthy individuals, was known as Personal Financial Planning, or "PFP."
25 The KPMG group focused on designing, marketing, and implementing tax shelters for individual
26 clients was known at different times as CaTS ("Capital Transaction Strategies"), and IS
27 ("Innovative Strategies").

28 ⁷ KPMG personnel also formed alliances, operating agreements, and/or joint ventures with
outside persons, including former partners, employees, and others. KPMG also worked with law
firms/lawyers and with banks in implementing the FLIP, OPIS, and BLIPS tax shelter
transactions. Significant activity and coordination regarding the design and implementation of
the tax shelters took place by California licensees or on behalf of California taxpayers.

⁸ KPMG LLP ("KPMG") was, at all times relevant, licensed by the Board and operating
several offices in California. KPMG was engaged in providing tax services to corporate and
individual clients and providing audit services to corporate, governmental and other clients. The
Board's related action against KPMG, Accusation No. AC-2006-28, was resolved effective
January 18, 2008. It is further referenced in paragraph 12.

1 "through the conduct of certain KPMG tax leaders, partners, and employees,
2 during the period from 1996 through 2002, KPMG assisted high net worth
3 individuals to evade individual income taxes on billions of dollars by developing,
4 promoting, and implementing unregistered and fraudulent tax shelters. A number
5 of KPMG tax partners engaged in conduct that was unlawful and fraudulent...".
(Accusation, Paragraph 57, quoting DPA.)⁹

6 14. Respondent was a tax partner at KPMG between 1996 and 2002, the period relevant
7 herein. He participated in the above-described scheme, consisting of:

- 8 A. devising, marketing, and implementing fraudulent tax shelters;
- 9 B. preparing and causing to be prepared, and filing and causing to be filed with the
10 IRS false and fraudulent U.S. individual income tax returns containing the fraudulent tax shelter
11 losses; and
- 12 C. fraudulently concealing those shelters from the IRS.

13 FLIP, OPIS, and BLIPS TAX SHELTERS

14 15. The fraudulent tax shelter transactions which are the subject matter of this Accusation
15 were FLIP ("Foreign Leveraged Investment Program"), OPIS ("Offshore Portfolio Investment
16 Strategy") and BLIPS ("Bond Linked Issue Premium Structure").¹⁰

17 16. Respondent was generally involved in BLIPS, FLIP¹¹, and OPIS¹² transactions.

18 ⁹ See paragraphs 50-55 of Accusation AC-2006-28 and attachment, and paragraphs 9-11
19 of Stipulation AC-2006-28 for detail.

20 ¹⁰ During the relevant time period, KPMG personnel, some of its clients, and others
21 involved in these tax shelter transactions prepared, signed and filed tax returns that falsely and
22 fraudulently claimed over \$4.2 billion in bogus tax losses generated by FLIP and OPIS
23 transactions, and \$5.1 billion generated by BLIPS transactions. A significant proportion of the
24 tax payers who filed tax returns with KPMG's assistance using FLIP, OPIS, and BLIPS tax
25 shelters were California taxpayers. Approximately 29% of the transactions were in California
26 and approximately 38% of KPMG's fees originated in California.

27 ¹¹ FLIP was essentially similar to OPIS. The shelters were designed to generate bogus
28 capital losses in excess of \$20 million through the use of an entity created in the Cayman Islands.
The client purportedly entered into an "investment" transaction with the Cayman Islands entity by
purchasing a purported warrant or entering into a purported swap. The Cayman Islands entity
purportedly made a pre-arranged series of investments, including the purchase, from a bank, of
bank stock using money purportedly loaned by the bank, followed by a repurchase of that stock
by the pertinent bank at a prearranged price. The tax shelter transactions were devised to last for
only approximately 16 to approximately 60 days, and the duration of the shelter was pre-
determined.

¹² OPIS was essentially similar to FLIP, described in the footnote above. KPMG's gross
fees from OPIS transactions were at least \$28 million.

17. The law in effect from at least in or about August 1997 provided that if a taxpayer claimed a tax benefit that was later disallowed, the IRS could impose substantial penalties, ranging from 20%-40% of the underpayment of tax attributable to the shelter, unless the tax benefit was supported by an independent opinion relied on by the taxpayer in good faith that the tax benefit was "more likely than not" to survive IRS challenge.

18. Respondent signed at least five opinion letters and at least four engagement letters without knowing or being aware of the individual or the client's specific needs or circumstances. He signed these letters without independently scrutinizing the content of the letters, or their effect or applicability to the respective clients. In addition, he failed to carefully read or understand the content and information contained in the letters.

FLIP and OPIS SHELTERS

19. In all material respects, FLIP and OPIS were the same. FLIP and OPIS were generally marketed only to people who had capital gains in excess of \$10 million for FLIP and \$20 million for OPIS.¹³

20. Respondent was generally involved in FLIP and OPIS transactions, the number of which is known to Respondent but not to Complainant. Respondent was the engagement partner for at least two OPIS transactions. Respondent signed at least one FLIP and two OPIS opinion letters and, with the assistance of other KPMG tax personnel and their associates, issued and caused to be issued opinion letters although he knew, inter alia, that tax positions taken were not "more likely than not" to prevail against an IRS challenge if the true facts regarding those transactions were known to the IRS; and that the opinion letters and other documents used to implement FLIP and OPIS were false and fraudulent in a number of ways, including that:

¹³ In return for fees totaling approximately 5-7% of the desired tax loss, including a fee to KPMG equal to approximately 1-1.25% of the desired tax loss, KPMG, its KPMG tax personnel and their associates implemented and caused to be implemented FLIP and OPIS transactions and generated and caused to be generated false and fraudulent documentation to support the transactions, including but not limited to KPMG opinion letters claiming that the purported tax losses generated by the shelters were "more likely than not" to withstand challenge by the IRS. As agreed to, and arranged by, KPMG tax personnel, outside lawyers also issued "more likely than not" opinion letters in return for fees typically of approximately \$50,000 per opinion, which opinions tracked, sometimes verbatim, the KPMG opinion letter.

1 a. Money was paid by the FLIP and OPIS clients for an "investment" component
2 of the transactions (a warrant or a swap), whereas in fact that money constituted fees paid to
3 KPMG and other participants, as well as money that was temporarily "parked" in the deal but
4 ultimately returned to the client.

5 b. There was no evidence of a "firm and fixed" plan to complete the steps making
6 up the shelter in a particular manner when, in fact, there was such a plan, and the transactions in
7 fact were designed to be completed, and were completed, in the particular manner designed to
8 generate the tax loss.

9 c. The clients were not "more likely than not" to survive an IRS challenge (based
10 on the "step transaction doctrine").¹⁴

11 BLIPS SHELTER

12 21. KPMG and its tax personnel and associates marketed and caused to be marketed, and
13 implemented and caused to be implemented the transactions, and generated and caused to be
14 generated false and fraudulent documentation to support the BLIPS transactions. This activity
15 included, but was not limited to, generating KPMG opinion letters (and opinion letters by law
16 firm(s) that claimed that the purported tax losses generated by the shelters were more likely than
17 not to withstand challenge by the IRS. All of these opinion letters were almost identical.

18 22. Respondent was generally involved in BLIPS transactions, the number of which is
19 known to Respondent but not to Complainant. KPMG and its tax personnel and associates
20 marketed and caused to be marketed, and implemented and caused to be implemented the
21 transactions, and generated and caused to be generated false and fraudulent documentation to
22 support the BLIPS transactions.¹⁵ This activity included, but was not limited to, generating

23
24 ¹⁴ The "step transaction doctrine" is a legal doctrine permitting the IRS to disregard
certain transactions having no economic substance or business purpose and the purported tax
effects of those disregarded transactions.

25 ¹⁵ BLIPS generated at least \$5.1 billion in bogus tax losses. KPMG's gross fees from
26 BLIPS transactions were at least \$53 million. Associated law firms and boutique practices had
gross fees of at least \$147 million. The fees totaled approximately 5-7% of the desired tax loss,
27 including a fee to KPMG equal to approximately 1-1.25% of the desired tax loss; a fee to a
"boutique practice" equal to approximately 2.75% of the desired tax loss, and a fee to a law firm
28 generally equal to \$50,000 per transaction.

1 KPMG opinion letters (and opinion letters by law firm(s)) that claimed that the purported tax
2 losses generated by the shelters were more likely than not to withstand challenge by the IRS. All
3 of these opinion letters were almost identical.

4 23. Respondent signed at least two BLIPS transaction opinion letters. He caused to be
5 issued opinion letters related to this and other BLIPS transactions although he knew or should
6 have known that (i) the tax positions taken were not more likely than not to prevail against an IRS
7 challenge if the true facts regarding those transactions were known to the IRS, and (ii) the opinion
8 letters and other documents used to implement BLIPS were false and fraudulent in a number of
9 ways, including but not limited to the following:

10 a. BLIPS was falsely described as a three-stage, seven-year investment program,
11 when in truth and in fact, all participants were expected to withdraw at the earliest opportunity
12 and within the same tax year in order to obtain their tax losses. BLIPS was falsely described as a
13 "leveraged" investment program, whereas, in fact, the purported loan transactions that were part
14 of BLIPS (and that were the aspect of BLIPS that purported to generate the tax loss) were shams -
15 - no money ever left the bank and none of the banks assigned any capital cost to these purported
16 BLIPS loans.

17 b. The BLIPS opinion letters falsely stated that the client (based on the client's
18 purported "independent review", as well as that of outside "reviewers") "believed there was a
19 reasonable opportunity to earn a reasonable pre-tax profit from the [BLIPS] transactions," when
20 in truth and in fact, there was no "reasonable likelihood of earning a reasonable pre-tax profit"
21 from BLIPS, and instead the "investment" component of BLIPS was negligible, unrelated to the
22 large sham "loans" that were the key elements of the purported tax benefits of BLIPS, and was
23 simply window dressing for the BLIPS tax shelter fraud.

24 c. The opinion letters and other documents were misleading in that they were
25 drafted to create the false impression that KPMG, its tax personnel, and others associated with the
26 tax shelter scheme were all independent service providers and advisors, when in truth and in fact
27 KPMG personnel and associates jointly developed and marketed the BLIPS shelter.

28

1 24. At various points during the development of BLIPS, KPMG tax personnel identified
2 various significant defects of BLIPS, including that the description of BLIPS and the factual
3 representations contained in the BLIPS opinion letter and in other documents were false.
4 Nevertheless, in or about 1999, the marketing of BLIPS by the firm was approved. Likewise, the
5 risks of proceeding with implementation of BLIPS in 2000 were discussed. Nevertheless, and
6 despite the obviously fraudulent nature of BLIPS and the warnings conveyed, KPMG tax
7 personnel decided not to refund BLIPS fees and to proceed with the issuance of "more likely than
8 not" opinion letters on all of the 1999 transactions with the intent that BLIPS clients would claim
9 the bogus BLIPS losses on 1999 tax returns. KPMG tax personnel and others, including
10 Respondent, continued to be involved in the implementation of more BLIPS tax shelter
11 transactions in 2000 and, in 2001.

12 **FRAUDULENT CONCEALMENT OF TAX SHELTERS**

13 25. In addition to preparing and causing to be prepared false and fraudulent
14 documentation relating to and implementing the shelter transactions, and in addition to preparing
15 and causing to be prepared tax returns that fraudulently incorporated the bogus tax shelter losses,
16 Respondent participated in steps taken to fraudulently conceal from the IRS the fraudulent tax
17 shelters, and/or knew or should have known that the steps would have the effect of concealing the
18 shelters from the IRS. The steps taken included, but were not limited to, the following:

- 19 (1) not registering the tax shelters with the IRS as required by law;
- 20 (2) preparing and causing to be prepared tax returns that fraudulently concealed the
21 bogus losses from the IRS.

22 **FAILING TO REGISTER TAX SHELTERS**

23 26. Under the law in effect at all times relevant to this Accusation, an organizer of a tax
24 shelter was required to "register" the shelter by filing a form with the IRS describing the
25 transaction. The IRS in turn would issue a number to the shelter, and all individuals or entities
26 claiming a benefit from the shelter were required to include with their income tax returns a form
27 disclosing that they had participated in a registered tax shelter, and disclosing the assigned
28 registration number. Notwithstanding these legal requirements, KPMG's tax personnel decided

1 not to register the tax shelters based on a "business decision" that to register the shelters would
2 hamper KPMG's ability to sell them. Respondent knew or should have known of the requirement
3 to register the shelters.

4 **FIRST CAUSE FOR DISCIPLINE**
5 **Fraud in the Practice of Public Accountancy**
6 **[Business and Professions Code § 5100(c)]**

7 27. The matters alleged in paragraphs 11 through 26 are re-alleged as though fully set
8 forth.

9 28. Respondent, serving as the engagement partner for, or involved in, a number of tax
10 shelter transactions, among them those listed above, participated in employing various means to
11 conceal from the IRS and other taxing authorities the fraudulent tax shelters. Respondent's
12 license is therefore subject to disciplinary action based on his involvement or acquiescence in:

13 A. The failure of KPMG to register the tax shelters as required;

14 B. The preparation of, or causing to be prepared, false or fraudulent documentation
15 supporting the implementation of the tax shelters; and/or

16 C. The implementation of the tax shelters, including but not limited to preparing
17 and/or causing to be prepared or participating in the preparation and/or filing of tax returns that
18 fraudulently concealed the bogus losses from the IRS.

19 29. Incorporating by reference the matters alleged in paragraphs 25 and 26, cause for
20 discipline of Respondent's license for fraud in the practice of public accountancy is established
21 under Code Section 5100(c).

22 **SECOND CAUSE FOR DISCIPLINE**
23 **Dishonesty in the Practice of Public Accountancy**
24 **[Business and Professions Code § 5100(c)]**

25 30. Complainant realleges paragraphs 11 through 26 above. Incorporating those matters
26 by reference, cause for discipline of Respondent's license for dishonesty in the practice of public
27 accountancy is established under Code Section 5100(c) based upon his dishonest acts, and
28 omissions in the course of his participation, as described above, in the FLIP, BLIP, and OPIS tax
shelters.

1 **THIRD CAUSE FOR DISCIPLINE**
2 **Gross Negligence in the Performance of Public Accountancy**
3 **[Business and Professions Code § 5100(c)]**

4 31. Complainant realleges paragraphs 11 through 26 above. Incorporating those matters
5 by reference, cause for discipline of Respondent's license for gross negligence in the practice of
6 public accountancy is established under Code Section 5100(c) based upon his conduct, which
7 constituted extreme departures from applicable professional standards.

8 **FOURTH CAUSE FOR DISCIPLINE**
9 **Failure to Observe Professional Standards in Performance of Public Accountancy**
10 **[Board Rule 58/ Business and Professions Code § 5100(g)]**

11 32. Complainant realleges paragraphs 11 through 26. Incorporating those matters by
12 reference, cause for discipline of Respondent's license is established in that his failure to comply
13 with professional standards applicable to public accountancy constitutes the willful violation of
14 Board Rule 58, providing cause for discipline of his license under Code Section 5100(g).

15 **FIFTH CAUSE FOR DISCIPLINE**
16 **Conspiracy with Unlicensed Person to Violate Accountancy Act**
17 **[Business and Professions Code §§ 125, 5100]**

18 33. Complainant realleges paragraphs 11 through 26. Incorporating those matters by
19 reference, cause for discipline of Respondent's license is established in that he conspired with
20 unlicensed persons, including lawyers and others, to devise, market, and/or implement the
21 fraudulent tax shelters, in violation of Code section 125. The conduct of Respondent, as alleged,
22 constitutes general unprofessional conduct under Code section 5100.

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SIXTH CAUSE FOR DISCIPLINE

**Repeated Negligent Acts in the Performance of Public Accountancy
[Business and Professions Code § 5100(c)]**

34. Complainant realleges paragraphs 11 through 26 above. Incorporating those matters by reference, cause for discipline of Respondent's license for repeated negligent acts in the performance of public accountancy is established under Code Section 5100(c) based upon his conduct, which constituted repeated extreme departures from applicable professional standards.

SEVENTH CAUSE FOR DISCIPLINE

**Breach of Fiduciary Responsibility in the Performance of Public Accountancy
[Business and Professions Code § 5100(i)]**

35. Complainant realleges paragraphs 11 through 26 above. Incorporating those matters by reference, cause for discipline of Respondent's license for breach of fiduciary responsibility in the performance of public accountancy is established under Code Section 5100(i) based upon his conduct, which constituted extreme departures from applicable professional standards.

EIGHTH CAUSE FOR DISCIPLINE

**Knowing Preparation, Publication, or Dissemination of False, Fraudulent or
Materially Misleading Financial Statements, Reports, or Information
[Business and Professions Code § 5100(j)]**

36. Complainant realleges paragraphs 11 through 26 above. Incorporating those matters by reference, cause for discipline of Respondent's license for knowing preparation, publication, or dissemination of false, fraudulent, or materially misleading financial statements, reports, or information is established under Code Section 5100(j) based upon his conduct, which constituted a departure from applicable professional standards.

NINTH CAUSE FOR DISCIPLINE

**Obtaining Valuable Consideration by False Pretenses
[Business and Professions Code § 5100(k)]**

37. Complainant realleges paragraphs 11 through 26 above. Incorporating those matters by reference, cause for discipline of Respondent's license for obtaining valuable consideration by false pretenses is established under Code Section 5100(k) based upon his conduct, which constituted a departure from applicable professional standards.

TENTH CAUSE FOR DISCIPLINE
Violation of Professional Standards
[Board Rule 58/ Business and Professions Code § 5100(g)]

38. Complainant realleges paragraphs 11 through 26 above. Incorporating those matters by reference, cause for discipline of Respondent's license for violation of professional standards is established under Board Rule 58 and Code Section 5100(g) based upon his conduct, including signing and causing to be signed, engagement and opinion letters for clients without independently, diligently or accurately evaluating the specific needs and concerns of the clients, which constitutes willful violation of Board Rule 58, providing cause for discipline of his license under Code section 5100(g).

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PRAYER

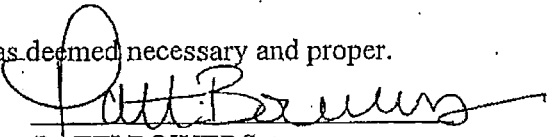
WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the California Board of Accountancy issue a decision:

1. Revoking, suspending, or otherwise imposing discipline upon Certified Public Accountant Number 23233, issued to Dennis Akira Ito.

2. Ordering Dennis Akira Ito to pay the California Board of Accountancy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 5107;

3. Taking such other and further action as deemed necessary and proper.

Dated: October 29, 2009


PATTI BOWERS
Executive Officer
California Board of Accountancy

Complainant

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